

# **RE-MAPPING THE CONTOURS: INTERROGATING THE ONTOLOGY OF INTERNATIONAL LAW IN A RAPIDLY-CHANGING WORLD\***

**Chima Centus Nweze\*\***  
**Justice of the Nigerian Supreme Court**

## **PREFATORY REMARKS**

I stand before you, with humility, to deliver the Silver Jubilee Keynote Address at this year's Fulbright Symposium: an event hosted annually in the intellectual ambience provided by the Golden Gate University. Pray, permit me to express the profound debt of my gratitude to the Golden Gate University School of Law Sompong Sucharitkul Centre for Advanced International Legal Studies under the directorship of Professor Chris Nwachukwu Okeke, Nigeria's gift to the international legal community, for adjudging me worthy of this dignified and enviable pedestal.

I understand that, in the previous years, legends and sundry luminaries had stood on this pedestal to deliver keynote Addresses in the Annual Fulbright Symposium series. They include: Professor Dr Sompong

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\* **Keynote Address at the Silver Jubilee Anniversary of the Annual Fulbright Symposium, Golden Gate University, School of Law, San Francisco, California, USA, Friday, March 27, 2015;** I am greatly indebted to the erudite scholar, Barrister Vincent Obetta, a brilliant and energetic young lawyer whose constructive interventions, considerably, contributed in shaping the final outlook of this Keynote Address.

\*\* **Ph. D.; LL. M.; BL; Justice of the Nigerian Supreme Court; Member, International Advisory Board, Annual Survey of International Law.**

Sucharitkul, the pioneer Director of this Centre; Their Excellencies, late Judge Peter Hendricks Kooijmans and Abdul G. Koroma, former Judges of the ICJ at The Hague and His Excellency, Sir Arnold Amet, former Attorney General and Minister of Justice, Papua, New Guinea. Others are Distinguished Professor Dr Ndiva Kofele Kal, Southern Methodist University, School of Law, Dallas; Professor Dr Van Walt Van Praag, Visiting Professor, Columbia University; Professor Alsuel Kwame Ntummy, ESUT and Professor Dr Sophie Clavier, Chair, International Relations Department, San Francisco State University, San Francisco, California etc.

I must commend the Centre and its Director for their perspicacity in their choice of the broad theme of this year's lecture: "Adapting International Law to a Rapidly-changing World." This theme is not only charming for its topicality, it is, actually, engaging for its piquancy! Who does not know that the Westphalian conception of international law has become so anachronistic that it can no longer, sufficiently, address the contemporary questions that confront our globalised world: a globalised world order that has thrown up challenges that nibble at the continued relevance of international law?

True, indeed, these challenges shaped the tone of this Keynote Address. After all, the *raison d'être* of an address, such as this, is to set the tone of the discourse for the other speakers and discussants. Unarguably, consensus may not be easy to attain as the various speakers are bound to explore the topic from their peculiar backgrounds. In attempting to set the tone of the symposium today, this keynote speaker will, first, donate the thesis that, owing to the magnitude of the current problems confronting the international community, publicists must eschew the penchant for rhetoric: an indulgence that characterized the life of the subject of international law from its nascence. We, therefore, challenge our policy makers, publicists etc to see the urgent need for re-mapping the contours of the subject of international law against the background of these contemporary challenges.

To start with, some of the challenging issues in international legal discourse are the questions how to deal with the recurring and increasing prevalence of violence, natural disasters and the rise of private actors and multinational institutions (MNCS), and their influence on the international legal system. We must concede that the literature on re-thinking international law has been burgeoning ever before the idea of this Symposium<sup>\*\*\*</sup>

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<sup>\*\*\*</sup> S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011); B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (2003); and S. Marks, *The Riddle of All Constitutions: International Law, Democracy and the Critique of Ideology* (2000).

## Introduction

The collapse of the cold war gave birth to a new regime in international legal discourse. It was an epoch–making event occasioned by a paradigm shift from the traditional bi-polar United States- led coalition in the West, on the one hand; and the USSR-led Eastern Coalition, on the other hand. The bi-polar international political regime that reigned from the end of the Second World War was replaced by what became known as ‘unchallenged uni-polarity.’<sup>1</sup> This novel development, as a result, dashed the high hopes for a serene, peaceful and secure international community.

In retrospect, international law evolved as an instrumentality for stemming the penchant for the usurpation of sovereign powers and privileges; re-directing inter-state violence, and addressing breaches of territorial integrity. At its nascence, therefore, emphasis was not on the wrongful act or acts perpetrated by non-state actors. Under the traditional international law system, security concerns are practised by overt threat: to the Americans and their European allies, security implies deliberate confrontation: a pervasive military presence and ‘strongly – motivated nuclear superior power without the luxury of equivalent conventional forces or similar strategic

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<sup>1</sup> M.S McDougal and D.M. Reisman, International Law in Contemporary Perspective, new Haven, 1980, P5.

depth.’<sup>2</sup> There has, however, been a great change of tactics since the end of the Second World War.

The international law of war, as encapsulated in the Geneva Conventions and the Additional Protocols, now appears obsolete just as the rules of engagement, guiding the actions of combatants and those protecting civilians in the battlefield, are no longer tenable.

Beginning from the early 1990s, there has not been any defined threat or enemy substituted for the Eastern Block; neither has there been any new scheme that replaced the pattern of polarity.<sup>3</sup> What may be, loosely, referred to as the new international law is now characterized by poly-centric decision – making structures coupled with the spheres of law that are broken into cleavages.<sup>4</sup>

Take these instances: the controversy generated by the unilateral military intervention in the conflict in Kosovo; the invasion of Iraq by the United States-led Allied Forces without the authorization of the United Nations Security Council; the much-criticized belated intervention of the international community in the pogrom in Rwanda; swift UNSC approval of military intervention in Libya and the UNSC deadlock arising from China and Russia vetoes against United Nations’ intervention in the over two years Syrian civil war.

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<sup>2</sup> J. Battilega, “Transformation in Global Defence Market Industries: Implications for the Future of Warfare (Washington D. C.: National Intelligence Council 2005).

<sup>3</sup>R. C. Gilpin, “War and Change in world Politics (Cambridge: Cambridge University Press, 1981).

<sup>4</sup>D. A. Lake, “Powerful Pacifists: Democratic states and War.”

Others are: the increasing attack by terrorist organizations in countries such as Afghanistan, Pakistan, Iraq, Somalia, Angola and Kenya. These, and the currently raging civil war in Ukraine, testify to the unanticipated difficulties embedded in meeting with the new challenges of traditional international law.<sup>5</sup>

As new vistas open in international law, thereby making a drastic shift from a state-centered paradigm to unprecedented transnational truisms, institutions as well as non-state actors, there is a challenge on the *status-quo* of state responsibility, especially, as it relates to the latter's actions.

The organic nature of international law makes it a difficult task to pigeon-hole the subject definitively. Its strength, actually, lies beneath these characteristics – its adaptability. In other words, international law must be seen to be dynamic enough to adapt to the tides of globalization. Where it fails to address some of these challenges, it swiftly slides into irrelevance and oblivion. According to Alex Downer:<sup>6</sup>

.... International law is itself evolutionary – always a work in progress but rather than blind forces in natural selection, in international law, it is people like us: governments, academic, practitioners, opinion-makers, that are agents of change.

This address will, certainly, provoke debates. As its contribution to the anticipated debates, it, humbly, attempts to

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<sup>5</sup> *American Political Science Review*, Vol. 86.3 (1993), pp. 6-20. B.S. C. Chimni, *International Law and World Order*, (New Delhi: NP, 1993)

<sup>6</sup> The Hon. Alexander, "International Law: Development and Challenges," (Speech at the Law Institute of Victoria, Melbourne, 23 November, 20-5).

proffer some suggestions that would, hopefully, contribute in repositioning international law in the 21st century.

## **The Neo-Polar system**

As earlier mentioned, the cold war era ended with the ushering in of a new system in international law. Thus the new system introduced a paradigm shift from the bi-polar world politics to a uni-polar regime. The disappointment which eventuated from the failure to deliver the much anticipated international peace and security catalyzed some of the non-aligned countries in their choices of the path of the popular approach to securitization. The result was the introduction of the concept of “Human security” which morphed into the template for the understanding of international security.<sup>7</sup> The combined efforts of both the middle powers namely, Canada and the Scandinavian Countries, and the sudden realization by some of the developing countries, who were committed to promoting peace in the already crisis– infested world, gave rise to a campaign against the age–old state – centric approach to human security.<sup>8</sup>

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<sup>7</sup> S. Ratner, “Corporations and Human Rights: A Theory of Legal Responsibilities, III *Yale, L. Y.* 443 (2001) at 452.

<sup>8</sup> Ibid

In traditional international law, security is within the exclusive preserve of nation-states. According to Bar<sup>9</sup> “traditionally, the concept of security has been concerned with understanding the causes of war and the conditions of peace.”<sup>10</sup> It was the concerted effort to increase international awareness towards the security of civilians and non-combatants that provided the rationale towards enlarging the scope of security, horizontally, to add up to such other factors as human rights, environmental sustainability, among others.

This new concept of human security gave birth to the conscious identification of certain threats to human security at the regional, national and transnational levels.<sup>11</sup> Human security was thus defined as “freedom from fear and want” which hitherto highlighted the need to focus on “people-oriented security.” This is a total departure from the traditional state–security pattern.

The Human security concept crept into Africa and was first encapsulated in the Kampala Document: a blueprint that set out the process for the convocation of a Conference on Security, Stability, Development and Cooperation in Africa (CSSCDA). The policy thrust of the CSSCDA was to propagate peace, security and stability as the bastion for cooperation and

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<sup>9</sup> M. Sc. Bah, *The Intervention Dilemma, The Dynamic of civilian protection in the post-cold war era* ISS/UNESCO, Paris/Pretoria, 2001.

<sup>10</sup> E. Newman *et al* (eds), *Multilateralism Under Challenge? Power, International Order and Structure Change* (Tokyo: United Nations University Press, 2003).

<sup>11</sup> R. H. Jackson, “Negative Sovereignty in Sub-Saharan Africa,” *Review of International Studies*, 12, October, 1988, Pg.221.



development on the Continent. It emphasized that the exercise of responsible sovereignty requires multilateral approach in order to deal with internal/domestic conflicts. During the ECOWAS Conference in 1999, she adopted the Protocol on Conflict Resolutions and also internalized some of the principles embedded in the CSSCDA.<sup>12</sup>

Interestingly, the theory of human security is a lofty ideal for civilian protection but alien to traditional international law. However, the challenge is the lack of will by key players to enforce these principles in sync with the spirit and letters of the document.

### **Emerging Structure of Authority**

In the new international law, the rule that regulates how power is wielded appears more complex and complicated. In contrast, traditional international law power-structure was conceived largely as a hierarchy within the authority of nation-states unlike the existing hierarchical arrangement which cuts across borderless configurations. International law today has introduced a great number of novel interwoven concepts such as multi-lateralism, good governance, and multilevel, constitutional and administrative perspectives.<sup>13</sup>

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<sup>12</sup> W. I. Zartman, "Security, Stability, Development and Cooperation in Africa: A Regional expression of a global policy network in formation," Johns Hopkins University, Washington D. C. accessed at <http://www.gpi.net/cms/public> on March 4, 2015.

<sup>13</sup> Christian Jeorges, "Constitutionalism and Transitional Governance: Exploring a magic triangle" in Jeorges et al (ed), *Transitional Governance and Constitutionalism* (Hart, 2004).

Analytically, governance connotes a body set up to resolve disputes which involve private/non-state actors. This, originally, did not fit into the conservative international law framework.<sup>14</sup> In this case, the flow of power is found within a self stabilization network rather than one established by nation- states or international organizations. The current regime is that the law-making process transmutes from State-centric power structures to inputs by non-state drivers, private actors and their interaction with domestic and supranational institutions. This new international law that regulates how power and authority are wielded is a form of adaptation of the international legal system to the increasing changes in the existing regime.

### **State Responsibility and Non-State Actors**

Traditional international law was basically concerned with the diplomatic relations between states. But the glaring features of the new international legal debate are the emergence and recognition of private actors as opposed to state gladiators. The imposing participation of non-state actors is a function of the waning potency of the strict conception of sovereignty in international law.<sup>15</sup> Thus the direct recognition of non-state interests has to do with the reconstitution of international law to adapt to the legitimacy of state authority

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<sup>14</sup> Ibid

<sup>15</sup> J. Hein, (eds), *The Dark Side of Globalization* (Tokyo: UN University Press, 2011).

as it relates to individuals to share a closer interaction between national and international legal precepts in those areas that were, traditionally, the preserve of state actors. In the same vein, the emergence of strong non-state actors exuding influence and shaping international legal discourse is also a function of the emerging change in international law. Also in this category is the proliferation of non-governmental organizations assuming the functions that were reserved to nation-states.

It is important to point at the significant contributions made by Non-Governmental Organizations (NGOs) and Multinational Corporation (MNCs) in global politics. The power, influence and scope of these private actors may not have been defined. However, international law is, increasingly, dealing with the manifestations of their activities.

Another aspect of the growing new concept in international law is the awareness and- high wired advocacy programmes against impunity and the voice demand for accountability of leaders, individuals and legal personality under international law. In pursuit of this is the developing branch of international law – the international criminal justice system, and more so the more peripheral efforts to hold the

MNCs responsible through international soft-law standards on corporate conduct.<sup>16</sup>

### **The Challenge of Interpretation**

Modern international law jurists and publicists are confronted with myriads of questions in terms of a series of divergent legal norms, institutional processes and debates. There is also the pressing and urgent question of how new legal norms could be, legitimately, interpreted and, universally, understood from emerging chaotic social practices. Due to the proliferation of these new norms, international law scholars are thus confronted with the challenge of interpretation. Today, treaties are concluded in some fallow areas that were uncharted in international law. This poses a great challenge to interpretation of new norms and rules within the spheres of the new international law regime.<sup>17</sup> It is worthy of note that as new areas begin to sprout, so too does the international legal discourse.

### **Transnational Terrorism and International Law**

Transnational Terrorism raises a difficult challenge in modern international law, especially as it relates to enforcement of legal norms. International law scholars have

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<sup>16</sup> T. G. Weiss and R. Thakur, *Global Governance and the UN: An Unfinished Journey* (Bloomington: Indiana University Press, 2010).

<sup>17</sup> The Vienna Convention on Law of Treaties, Article 31.3

attempted to debate the relationship between international law and terrorism in order to ascertain how to apply the former in combating the latter.<sup>18</sup> Contrary to the methodology of terrorists between the years 1960's to the 80's, 21<sup>st</sup> century terrorists exercise a reasonable scope of control and influence.<sup>19</sup> Improvements in technology provide terrorists with access to modern weaponry. They, equally, utilize the platforms provided by the internet to disseminate the message of hate, fear and terror to the world in a swift decree.

Indeed, it is with horror and trepidation that the world watched, helplessly, the pogrom of September 11, 2001 on the television and social media as the twin edifices were brought to ground zero by the Al Qaeda Network. These innovative types of non-state actors' participation, flagrantly, violate international legal norms and known states practices. They undermine the required connection between states and individuals upon which the traditional application of international legal order is based.<sup>20</sup>

Often times applying asymmetric strategy, private terrorist organizations may operate in the mould of nation-state kind-of style and occasion heavy casualty on the civilian populace while hiding under the pretext that they are not state

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<sup>18</sup> A Bianchi (ed), *Enforcing International Law Norms against Terrorism* (Oxford: Hart Publishing, 2004)

<sup>19</sup> O'Connell "Enhancing the status of non-state Actors through a global war on Terror (2005)

<sup>20</sup> Ibid

actors and cannot be responsible under the existing international law.

In other words, the egregious of terrorists, with the potential of a massive harvest of casualties on a single attack, are recent developments. It is no longer in dispute that transnational terrorism is one of the greatest challenges which confront international law in our rapidly- changing world.

Historically, international law was concerned more with conscious protection of states against interference or intra-violence than addressing internationally wrongful acts perpetrated by private actors. Moreover, rules regulating the use of force, invariably, responded to the unitary typology<sup>21</sup> whereas the reprieve offered rested basically on the bilateral idea of legal relationship.<sup>22</sup> Under this system, human rights protections extended to people suffering from domination and maltreatment occasioned by their own governments. At this period, the objective of international law was expressed in terms of state responsibility and such responsibility was directed at a known actor: the State.<sup>23</sup>

As the paradigm shifted from the traditional state – centrism to an emerging transitional reality, the emergence of non-state actors in the international scene has become a

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<sup>21</sup> R. P. Baraidge, Jr., *Non-State Actors and Terrorism: Applying the Law of State Responsibility* (The Hague Press, 2008)

<sup>22</sup> Ibid

<sup>23</sup> R. P. Mazzeschi, "The Marginal Role of the Individual in the ILC's Articles on State Responsibility" (2004) 15 *Italian Year Book of International Law* 39

challenge to state responsibility. Their debut raises the question of how to revisit the existing legal framework in order to identify the potential deterrence so as to prevent terrorism.<sup>24</sup> Reactionary tactics is an archaic model. However, it is important for the purpose of apportioning blames that proactive measures should be the key. A new regime of international legal rules must be set up with a view to discovering, as well as stamping out, the remote causes of transnational terrorism.

### **THE MENACE OF 'FAILING STATES' IN AFRICA AND THE CHALLENGE IT POSES TO INTERNATIONAL LAW**

Although it is undisputable that failed states have characterized the post cold war Africa, the phenomenon has long existed in the international political system. Fraenkel, thus, observes that what is now known as 'failed state' has been part of the political reality for as long as the international system of state existed.<sup>25</sup>

In attempting to trace the origin of failed states, it is apposite to begin from the nation-state epoch when European powers scavenged for colonies in the less developed continents of Africa and Asia.<sup>26</sup> Several decades after, failed states also prevailed in the early 1930's during the chaotic power tussle in the Chinese Republic. Tracing it further backwards, failed states existed in the early seventh-century Europe during the brutal

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<sup>24</sup> KN Trapp, *State Responsibility for International Terrorism* (Oxford: OUP, 2011).

<sup>25</sup> *ibid*

<sup>26</sup> B. Dube and P. Manasta, "Failed States' Discourse Under International Law: The Place, Attributes and Implications," *Journal of Political and Good Governance*, Vol. 42013

regime of violence and suffering which eventually gave birth to the Peace of Westphalia, hence, traditional international law.

Modern accounts of the phenomenon of failed states are glaring in sub-Saharan Africa where its presence has been negatively felt. The Somalia debacle readily comes to mind with her collapse in 1990 wherein all the state apparatchik were overran by extremist militia men. Others include the cases of Liberia and Sierra Leone which were engulfed by simultaneous catastrophes of internal conflicts spanning a decade; the Rwanda pogrom at the time of the worst holocaust of the century; the various phases of state failure in the Democratic Republic of Congo – a state which had maintained a steady momentum, or even worse, in anarchical disposition since the attainment of independence in 1960. The list is endless: state failure in Central African Republic; the Guinea Bissau; Sudan and the, recently, re-established governance in Mali which unfortunately inherited the spillover of the total collapse of state apparatus in the state of Libya's Arab Mahajamiriya. These were the relics of the many weak and failed states seen in Africa within the last two decades.

A failed state is a situation whereby government structures have collapsed; violence grows on the increase and functional governance ceases. The notion of failed state is one of the most difficult challenges confronting international law, particularly, in sub-Saharan Africa.<sup>27</sup> The modern failed state menace is a symptom of globalization, seen as an integral part of state weakness. The processes known as globalization are breaking up the socio-economic divisions that defined the patterns of

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<sup>27</sup> Thomas Dempsey, counterterrorism in African Failed States: Challenges and potential solutions <http://www.strategicstudiesinstitute.army.mil> accessed on March 2, 2015.



politics which characterized the modern period.<sup>28</sup> In view of this, the new style of warfare should be conceptualized with respect to this global dislocation. Further to this, the neo-liberal economic forces have contributed to the dislocation and fragmentation of capacity and weakening of the source of the provision of basic public goods in some states in Africa that are potentially fragile. It follows that the failure of the state is accompanied by a growing privatization of violence.<sup>29</sup>

This new style of wars is *sui generis* in character and form, exhibits multiplicity of fighting units, both public and private, state and non-state actors and, at some points, an admixture. According to Chuks Hagel, "existing and future challenges come 'not from rival global powers' but from weak states".<sup>30</sup> As a result, the failed state phenomenon is, indisputably, a paradigm shift in traditional international security system that demands new international law norms and strategy, in response.

Failed states in Africa have provided sanctuaries for terrorists groups in the region. In fact, since the end of the cold war, the failed states malaise has become the one most significant problem of the international community. However, predicating the effect of failed states solely on the provision of sanctuary for terrorists will amount to a fallacy of generalization, as they have bigger implications on humanity, beyond the international peace and security mantra.

The new international law is not responding swiftly as it ought to irrespective of the increasing crises witnessed in sub-Saharan Africa and

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<sup>28</sup> Kaldor, *New and Old Wars* (Ithaca, NY: Cornell University Press, 2004)

<sup>29</sup> Ibid

<sup>30</sup> Hagel, "A Republican Foreign Policy" Note, pg 84

the associated heavy toll it has taken on the people. The international community's style has weighed more on the side of defensive rather than a proactive approach. Regrettably, there are no existing norms, principles, statutes or conventions defining a failed state; neither is there a positive international legal instrument that provides for a situation of failed states in international law.

Notwithstanding the supposed coverage that the Geneva Conventions enjoys, they did not define what a failed state is. The Conventions merely prescribe the criteria for the qualification of what a failed state could be; a situation that has created a lacuna in the international law system. To this end, the term is left to the definitional whims of international law scholars and international institutions through their reports and articles which may be skewed to suit their vested interests.

In this situation of a definitional conundrum, who, therefore, determines a failed state? This is a difficult question under the new international law of our anticipation. Practical description is usually predicted on the leverage provided by some international institutions with respect to the various core indicators using the metric indicators method but not through a legal definition.<sup>31</sup> Prevailing national and international contributions to the identification of what amounts to a failed state are based on conceptual analysis of weak states, namely, the existence of security threat, economic implosion, human rights violations and immigration cases etc.

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<sup>31</sup> Daniel Thurer, "The Failed state" and International Law, *International Review of the Red Cross*, No. 836, 1999

Using classical international law and, in the absence of any international norms or conventions, the practice of the UN Security Council has been the only credible alternative in determining a failed state. It has been the practice where the Council has recourse to chapter VII of the UN Charter. Thus, in December, 1992, she exercised these powers through the passage of UNSC resolution 794 on the situation in Somalia where it was stated that: "The magnitude of human tragedy caused by the conflict was sufficient in itself to constitute a threat to peace."<sup>32</sup>

The same criterion was also applied in the case of Haiti. It, therefore, deductively follows that the norm of the UNSC is that systematic, widespread and serious breach of human rights or gross infringements of internal democracy will be sufficient grounds to permit forceful intervention by the UN Security Council in the internal affairs of a state in which government apparatus has totally broken down irretrievably.<sup>33</sup> The collapse of states becomes a matter for international concern because the international system becomes endangered if any of its member(s)/parts is seen to be weak and dysfunctional.

## **Impact of Weak and Failed States**

Various findings have been associated with failed states most of which have global impact. They are, among others, a forced migration flow which has widely been acclaimed to be recipes for the spread of extremists'

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<sup>32</sup> *ibid*

organizations, causing regional instability in Africa.<sup>34</sup> It is not feasible to understand the perennial increase of failed states in the African Lakes' region involving multiple states and millions of deaths without reference to militia groups who were forcibly displaced. Failing states are prone to all forms of illegal smuggling of arms and persons through porous borders thereby creating regional insecurity.<sup>35</sup> One of the greatest threats to regional security within the West African sub-region is the flow of weapons from the failed Libyan State into Mali, Chad, Cameroon, Niger and Nigeria where one of the extremist groups – Boko Haram, has waged deadly attacks on the three states in the North East of Nigeria.

There has also been a suggestion by researchers that failing or failed states may be a site for the transfer of chemical, nuclear and biological weapons.<sup>36</sup> It will be recalled that Charles Taylor of Liberia rose to become President in the event of that country's state failure. His dysfunctional government catalyzed the conflict and eventual failure of neighboring Sierra Leone. Weak and failing states in Africa have contributed to governments' inability to control the spread of communicable diseases such as the HIV Virus etc. In fact, it has been claimed that "AIDS," probably, spread through an African Civil War.<sup>37</sup>

Failed states have provided terrorists sanctuary in African States. They would appear to be potential grounds for the assemblage of extremist

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<sup>34</sup> G. Loescher *et al* (eds), *Protracted Refugees Situations: Political, Human Rights and Security Implications* (Tokyo: United Nations University Press, 2008).

<sup>35</sup> J. Roab and H. B. Milward, "Dark Net-Works as Problems," *Journal of Public administration Research and Theory*, Vol. 13, No. 4 (October, 2003) pg. 413.

<sup>36</sup> L. Zaitseva and K. Hand, "Nuclear Smuggling Chains; Suppliers, Intermediaries and End-Users," *The American Behavioral scientists* Vol. 46, No. 6 (February, 2003).

<sup>37</sup> Ibid

organizations and clearing houses for amassing Weapons of Mass Destruction, WMD. This relationship and the interwoven nature it has portrayed are ones that require international intervention by building and crafting a workable international instrument that will co-opt the phenomenon of state failure by way of fostering an improved legal version of how to measure a failing state, as well as adopting an acceptable definition of the term. In doing this, international players should not lose sight of the fact that any modern international law system should adopt multilateral approach to the 'securitization' process.

Although efforts are being made to address this anomaly, much progress cannot be made in the absence of a multilateral approach to the challenges posed by unanticipated but unavailable issues in today's international law system.

### **Multilateralism, the key**

Multilateralism has been widely accepted as the magic key in today's world politics. Since the last two decades, nation – states have come to appreciate that the emerging challenges of terrorism, the menace of contagious diseases, environmental degradation, peacekeeping and human rights abuses, among others, are too complex for a single country, irrespective of her political strength to adequately address on its own<sup>38</sup>.

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<sup>38</sup> J. F. Richard, *High Norm: Twenty Global Problems, Twenty Years to Solve Them*. (New York: Basic Books, 2002), 65-66.

According to Ramesh Thakur, multilateralism refers to collective, cooperative action by states to deal with common problems and challenges when these are best managed collaboratively at the international level.<sup>39</sup>

In an increasingly interdependent and globalised new world, multilateralism will continue to be a key solution to international law. There is no doubt that there would be limitations, however, the major constraint to effective utilization of this concept. Although not all issues answer to the multilateral approach, however, it is a fact that all states benefit from a system in which common norms are agreed to be binding on all actors – state or private.

In my humble view, the relevance, survival and continued existence of international law are dependent upon the ability to adapt to our rapidly-changing world. World over, people's opinions, across states and transcending national boundaries, are that the United Nations is the sole provider of the template upon which world leaders gather to address current pressing international/national issues for the survival, welfare and improvement of the lives of peoples globally.

It is a collective duty of the peoples of the world to strive to position international law to adapt to the myriads of challenges it faces. True, indeed, multilateralism is under heavy pressure ranging from arms control, human rights violations,

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<sup>39</sup> Ramesh Thakur, The United Nations in Global Governance: Rebalancing Organized multilateralism for current and future challenges.

environmental factors, invasion of independent states and criminal justice challenges. However, at such a critical time as this, it is auspicious to reaffirm the United Nations position as the armour bearer of the principle of multilateralism and the only institution saddled with the task for the pursuance of these objectives.

Irrespective of its many failings, the U.N remains the available best institution of worlds' unity – in- diversity where national and international, transnational and non-governmental organizational matters are multilaterally addressed in an oval table that provides space for all and sundry regardless of affiliation and power colourations. As Lindsay puts it:

Multilateralism not only represents the most efficient, most effective and most-egalitarian approach to addressing global issues, it is quite simply the only approach that brings with it the authority, legitimacy and resources required to tackle so vast and complex a problem.<sup>40</sup>

#### **PROFESSOR OKEKE: THE SCHOLAR AND THE COGENCY OF ADAPTATION OF INTERNATIONAL LAW IN A RAPIDLY-CHANGING WORLD**

In the course of our action research for this Keynote, we discovered that we have an ally in Professor Christian Nwachukwu Okeke, the current Director of this centre. In one of his numerous intellectual interventions titled "The Contributions of Nigeria to the Progressive Development of

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<sup>40</sup> L. Powell, "In Defence of Multilateralism," *Yale centre for Environmental Law and Policy*, ( New Haven: Lynne Rienner Publishers, 2002), 439.

International Law in Africa and the World,"<sup>28</sup> the erudite Publicist opined that:

...a distinction should be made between the *old established rules of international law which need either reform* or equal application to all states, and *new rules, the formulation of which must involve the participation of non-European developing nations* that were excluded in the crafting of the older rules of international law...

The first limb of the above proposition tallies with our concern in this address that time is now rife for the interrogation of the ontology of international law by re-mapping its contours, that is, the breadth of its subject matter. The immediate implication of this logic is that international law must accommodate new rules which must "involve the participation of non-European developing nations that were excluded in the crafting of the older rules of international law."

Sequel to the learned Professor's academic advocacy, it is not surprising that the Golden Gate University's International and Comparative Law centre has become the academic nursery for members of the new Salvation Army in the intellectual crusade for new rules by nationals of "non-European developing nations." Whether by sheer coincidence or deliberate policy design, out of the whopping eighty five candidates who,

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<sup>28</sup> C. N. Okeke, "The Contributions of Nigeria to the Progressive Development of International Law in Africa and the World," in *The Will- Expanding the National Conversation* (available online at <http://thewillnigeria.com/opinion/6681.htm>, accessed on March 6, 2015); [italics supplied for emphasis]



successfully, defended their SJD theses under the unremitting guidance of Professor Christian Okeke between 2003 and 2015, seventy six of them are non-European nationals. While some of the doctoral theses dwelt on the imperatives of the reform of the “old established rules of international law”, many others prognosticated on the cogency of the adaptation of international law rules in a rapidly-changing world.<sup>29</sup>

Due to spatial constraints, only one or two examples will be cited here to illustrate this point. In 2009, Ting-Lun Huang, from Taiwan, submitted and defended his SJD Thesis titled *The Status of Taiwan under International Law and in a Changing World*. Obviously concerned about the lacunae in the extant rules of international law in the face of contemporary armed conflicts, Joseph Madubuike-Ekwe, from Nigeria, undertook an exploration of the research topic *Contemporary International Law and the Participation of Children in Armed Conflicts*.

Professor Okeke and his supervisees have, instructively, dealt with areas that prefigure the theme of this Silver Jubilee Symposium. Instances include three studies by Nigerian alumni of Golden Gate University: while Olumide Obayemi, in 2007, examined the *Legality of Responses to the*

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<sup>29</sup> GGU Law SJD Alumni Report 02/02/2015

*Problems of International Terrorism and "Failed States" Phenomenon Considering Afghanistan and Iraq within the context of Contemporary Law Rules and Practice*, Chinyere Okpala, also, from Nigeria, opted for the topic *A Re-Assessment of the Effectiveness of OAU (AU) Conventions on Preventing and Combating Terrorism*. On his part, another distinguished alumnus, Sunday Ogbodo, appraised the *The Evolving and Challenging Roles of Certain International Financial Institutions in Developing Countries under International Law with particular reference to Nigeria, South Korea and Brazil*.

Two more examples include the works by Ching-Pou Shih, a 2010 GGU SJD graduate from Taiwan, whose concern was the *Moral and Legal Issues concerning Contemporary Human Cloning Technology – Quest for Regulatory Consensus in the international community to safeguard Rights and Liberties to the Future of Humanity*. The other is the provocative study by the Namibian, Julia Shilunga, who, in 2008, surveyed the incremental gains of the *Prosecutions of Heads of State Under International Law: Charles Taylor and Slobodan Milosovic*.

In all, this speaker is gladdened to note that the GGU International and Comparative Law Centre and her numerous graduates, under the

directorship of Professor Christian Nwachukwu Okeke, had, for quite some time now, been, actively, engaged in the evolution of vibrant and robust intellectual strategies for the adaptation of international law in a rapidly-changing world. I challenge the Centre to endeavour to publicize their research findings in such a way that they could shape and influence policy changes, particularly, in developing countries.

**Thank you for your kind attention!**